91-1567

Supreme Court, U.S.
FILED
MAR 24 1992
OFFICE OF THE CLERK

NO.

IN THE SUPREME COURT

OF THE UNITED STATES

OCTOBER TERM, 1991

HUGHES BRAILEY, pro se,

Petitioner-Appellant,

vs.

SECRETARY OF TREASURY, U.S.A., COMMISSIONER OF INTERNAL REVENUE, U.S.A.,

Respondents-Appellees.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

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March 24, 1992

A.

STATEMENT OF THE ISSUES PRESENTED

1. Whether the U.S. District Court has jurisdiction-duty under the First Amendment of the U.S. Constitution to review a final adverse order of the Internal Revenue Service, U.S.A. for levy upon common law wages, pursuant to Title 5 U.S.C., Chapter 7, (Judicial Review).

2. Whether applicable Federal Rules of Appellate Procedure govern lawful procedure in the District Court for a Title 5 U.S.C., Chapter 7 Judicial Review.

3. Whether the final adverse order of the Internal Revenue for levy upon Petitioner's common law wages is VOID and unenforceable under law if provisions of the Administrative Procedure Act for procedure in a contested case on the issue of Agency jurisdiction have been violated by Agency.

4. Whether the unenfranchised natural individual and his God-given natural rights for survival as guaranteed and protected under the Constitution-common law are the lawful object of Title 26 U.S.C. taxation, regulation, and associated destruction.

B.

PARTIES

1. The U.S. District Court for the Northern District of Illinois, Eastern Division, of Judge James B. Parsons.
2. Secretary of Treasury of the United States of America.
3. Commissioner of the Internal Revenue Service of the United States of America.

C.

TABLE OF CONTENTS

PAGE

A. STATEMENT OF THE ISSUES PRESENTED i

B. PARTIES iii

C. TABLE OF CONTENTS iv

D. REFERENCE TO LOWER COURT OPINIONS 1

E. JURISDICTIONAL STATEMENT 2

F. CONSTITUTIONAL PROVISIONS, STATUTES & REGULATIONS 3

G. STATEMENT OF THE CASE 9

H. ARGUMENT 18

I. APPENDIX ..... a- 1

D.

REFERENCE TO LOWER COURT OPINIONS

Appendix page No.

Final judgement and opinion of the
U.S. Court of Appeals for the
Seventh Circuit..... a- 1

Final judgement and opinion of the
U.S. District Court of
Judge James B. Parsons..... a- 12

E.

JURISDICTIONAL STATEMENT

The date of the judgement of the U.S. Court of Appeals sought to be reviewed is: December 26, 1991.

The statutory provision believed by Petitioner Hughes Brailey to confer jurisdiction upon this Court to review the judgement in question by writ of certiorari is 28 U.S.C., sect. 1254(1).

F.

CONSTITUTIONAL PROVISIONS,

STATUTES AND REGULATIONS

1. 1st Amendment right of petition - appeal to government for redress of grievances.

2. 5 U.S.C., Chapter 7 - Judicial Review.

3. 28 U.S.C., sect. 1331, Federal Question: "The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States."

4. 28 U.S.C., sect. 1346(a)(2), United States as defendant: "The district courts shall have original jurisdiction, concurrent with the United States Claims Court, of: (2) Any other civil action or claim against the United States, not exceeding $10,000 in amount, founded either upon the Constitution, or any Act of Congress, or

any regulation of an executive department ....."

5. 28 U.S.C., sect. 1361, Action to compel an officer of the United States to perform his duty: "The district courts shall have original jurisdiction of any action in the nature of mandamus to compel an officer or employee of the United States or an agency thereof to perform a duty owed to the plaintiff."

6. 26 U.S.C., sect. 6331(a), Levy and Distraint: "If any person liable to pay any tax neglects or refuses to pay the same within 10 days after notice and demand, it shall be lawful for the Secretary to collect such tax (and such further sum as shall be sufficient to cover the expenses of the levy) by levy upon all property and rights to property (except such property as is exempt under section 6334) belonging to such person or on which there is a lien provided in this chapter for the payment of

such tax. ....."

7. 26 U.S.C., sect. 6213(a), Time for filing petition and restriction on assessment, final statement: "Notwithstanding the provisions of section 7421(a), the making of such assessment or the beginning of such proceeding or levy during the time such prohibition is in force may be enjoined by a proceeding in the proper court."

8. 5 U.S.C., Chapter 5, the Federal Administrative Procedure Act.

9. Federal Rules of Appellate Procedure.

10. 28 U.S.C., sect. 2072, Rules of civil procedure: "The Supreme Court shall have the power to prescribe by general rules, the forms of process, writs, pleadings, and motions, and the practice and procedure of the district courts and courts of appeals of the United States in civil actions, including admiralty and maritime

cases, and appeals therein, and the practice and procedure in proceedings for review by the courts of appeals of decisions of the Tax Court of the United States and for the judicial review or enforcement of orders of administrative agencies, boards, commissions, and officers.

Such rules shall not abridge, enlarge or modify any substantive right ....."

11. 26 U.S.C., sect. 7421, Prohibition of suits to restrain assessment or collection: "Except as provided in sections 6212(a) and (c), 6213(a), 7426(a) and (b)(1), and 7429(b), no suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court by any person, whether or not such person is the person against whom such tax was assessd."

12. 4th Amendment right of privacy from unlawful government intrusion upon private

affairs.

13. 5th Amendment rights to due process and just compensation.

14. 9th Amendment implied acknowledgement of inalienable natural rights and immunities residing in the common law and law merchant as being retained by the people: "The enumeration in the Constitution of certain rights, shall not be construed to deny or disparage others retained by the people."

15. 13th Amendment right against involuntary servitude.

16. 14th Amendment implied grant of extra-common law U.S. Citizenship franchise: "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United

States; ....."

17. 16th Amendment restatement/affirmance of the power of Congress under the Constitution for "income" tax.

18. Illinois Revised Statutes Chapter 120, the Illinois Income Tax Act, section 3-303(e)(1), Taxability in other state: "In that state he is subject to a net income tax, a franchise tax measured by net income, a franchise tax for the privilege of doing business, or a corporate stock tax; or ....." .

G.

STATEMENT OF THE CASE

A. Nature of the Case.

This Petition for Writ of Certiorari is brought by Petitioner-Appellant Hughes Brailey from the affirmance by the United States Court of Appeals for the Seventh Circuit in Appeal No. 90-3613 of the dismissal by the United States District Court of Judge James Parsons of a Petition for Judicial Review filed by Brailey for review of an order of the Internal Revenue Service, U.S.A., for levy on his wages.

B. Course of the Proceedings.

Petitioner Brailey filed his Petition for Judicial Review - pursuant to Title 5, U.S.C., Chapter 7 for review of the order of the Internal Revenue Service, U.S.A. for levy on his wages, within 60 days of the entry of said Agency order, in the U.S.

District Court. The Secretary of Treasury, U.S.A., through the Internal Revenue Service, U.S.A., failed to file the administrative record specified in the Petition for Review but through the U.S. Attorney General's Office did file an answer in the District Court contesting jurisdiction of the Court to review the order. After a response by Petitioner, and a subsequent response thereto by the Respondents ordered by the District Court, the Petition was dismissed based on the primary contention of the Respondents that the District Court lacks subject matter jurisdiction. (a- 12 through a- 15).

Petitioner Brailey then appealed from said dismissal of his Petition for Judicial Review by the District Court to the United States Court of Appeals for the Seventh Circuit. On appeal the Respondents reiterated their primary contention that the District Court lacks subject matter juris-

diction, and after the Appeals Court notified all parties that oral argument was not deemed necessary, said Appeals Court affirmed the judgement of the District Court dismissing the Petition for Judicial Review for lack of subject matter jurisdiction, and ordered $1500 in sanctions upon Petitioner-Appellant Hughes Brailey for filing a frivolous appeal. (a- 1 thru a- 11).

C. Statement of Facts.

Hughes Brailey filed a Petition for Judicial Review of an order of the Internal Revenue Service, U.S.A. for levy on his wages, in the U.S. District Court of Judge James Parsons on April 2, 1990. (a- 16). The Agency order for levy on wages from which review was sought entered on February 9, 1990. (a- 18). Along with his Petition, Brailey also filed a Jurisdictional Statement (a- 20), which invoked jurisdiction of the District Court under the following:

1. The 1st Amendment right to petition for redress of grievance.

2. The Constitutional rights guaranteeing due process of law, equal protection, and other rights and immunities under the Constitution.

3. 26 U.S.C., sect. 6213(a), final statement which affirms that a proceeding for levy may be enjoined.

4. 5 U.S.C., Chapter 7, sect. 702, "Right of Review."

5. 28 U.S.C., sect. 1346(a)(2), "United States as defendant."

6. 28 U.S.C., sect. 1361, "Action to compel an officer of the United States to perform his duty."

Petitioner Brailey also maintained in his Jurisdictional Statement that procedure in the District Court for review is properly governed by applicable Federal Rules of Appellate Procedure. Petitioner Brailey raised this issue also in the U.S. Appeals Court which ruled that "Brailey's argument that the Federal Rules of Appellate Procedure governed his action in the district court is meritless." (a- 9).

The Respondents failed to ever file the administrative record in the District Court and instead filed their "Answer" which contended that:

1. The parties named in the Petition were improper.
2. That the District Court lacked subject matter jurisdiction.
3. That the "Anti-Injunction Act", 26 U.S.C., sect. 7421 bars the petition.
4. That sovereign immunity of the United States stands as a bar to the Petition.
5. That the Petition fails to set forth a claim upon which relief can be granted.
6. That in their conclusion, the District Court should be moved dismiss the Petition.

Petitioner Brailey filed a Motion For Agency to File the Record, in the District

Court, noting that the administrative record had not been filed within 60 days from service of the petition for review.

In response to order of the District Court, Petitioner Brailey filed his "Petitioner's Response to Respondents' Answer to the Petition", whereby objections to the Respondents' "Answer" (to the Petition) were presented including the issue of want of jurisdiction by the Internal Revenue Service, U.S.A. over the person of Petitioner Brailey, and lawfulness of the order for levy as determined not only by the issue of Agency jurisdiction over his person, but also by the lawfulness of the Agency quasi-judicial procedure which procured said order for levy. On appeal, Brailey raised the same issues before the Appeals Court whereby his contentions that Agency violation of the Administrative Procedure Act renders a subsequent order VOID, and that the unenfranchised natural

individual and his rights under the Constitution - common law are not the lawful object of Title 26 U.S.C. regulation and taxation, were both dismissed as being groundless argument. The Appeals Court also failed to mention in their Judgement, the fact that especially on appeal Brailey raised his Constitutional rights as they relate to enfranchisement, such as waiver of 4th and 5th Amendment rights protecting the natural individual, but being waived by the enfranchised individual.

In the Petitioner's Response to Respondents' Answer to the Petition, Brailey indicated that the order for levy on wages from which review was being sought entered as a final order of the Internal Revenue Service in a contested case on the issue of Agency jurisdiction over his person. Brailey also indicated the fact that he had attached a certified copy of the original Administrative Pleadings, Affidavits, and

Demand for a formal administrative hearing on the issue of Agency jurisdiction over his person, with his said Petitioner's Response to Respondents' Answer. Brailey also stated that he had filed said Adminstrative Pleadings with the Secretary of Treasury - Commissioner of Internal Revenue, U.S.A., via certified return receipt U.S. Mail received by Agency on December 14, 1981.

Though in their Judgement/Opinion, the Appeals Court states that Brailey has asserted that federal income tax liability is contractual, nowhere in all and any record, starting with the administrative record, has Brailey made such assertion, and it appears to Brailey that the Appeals Court has confused his real contention that the rational basis for federal income tax debt is state created franchises such as the privilege of Social Security as to mean that the liability for income tax

is itself contractual.

Hughes Brailey

Hughes Brailey, pro se

H.

ARGUMENT

1. The U.S. District Court has duty - jurisdiction under the 1st Amendment of the U.S. Constitution for review of a final adverse order of the Internal Revenue Service, U.S.A. for levy upon common law wages, pursuant to Title 5 U.S.C., Chapter 7 - Judicial Review.

When, through the routine usual course of an administrative agency such as the Internal Revenue Service, U.S.A., in applying the law/administrative rules upon persons that are the proper - lawful objects of the agency and the agency's rules, on occasion an agency might erroneously assert jurisdiction upon a person who is actually not within the lawful scope of its lawful jurisdiction. In such event, a

person who finds himself the victim of such a mistake of jurisdiction by an agency over his person, has adequate remedy and relief available to him through the United States Code as is guaranteed by the U.S. Constitution.

Under administrative law and procedure, when an agency such as the I.R.S. notifies a person that he is expected by them to comply with one its orders, it is thereby providing the person with ample notice and opportunity under the Federal Administrative Procedure Act to contest the agency's assertion of jurisdiction. As administrative agencys such as the I.R.S. are statutorily delegated with primary quasi-judicial adjudicatory jurisdiction over all of their rules - orders, when their authority is affirmatively challenged it then becomes their duty under the Constitution/Administrative Procedure Act to hold a formal hearing on the issue of jurisdic-

tion whereby they must determine the individual's Constitutional rights as required by law; and to inform him of his rights as the law requires; and if the agency is to be lawfully able to continue its assertions of having jurisdiction over the person in such a contested case, it must as required by law, overcome the weight of evidence presented. One of the first principles of the law of agency, and which is codified by the Federal Administrative Procedure Act, is that he who asserts jurisdiction, must prove jurisdiction. Hughes Brailey, after receiving administrative notice and opportunity, via his Administrative Law Brief/Affidavits/Demand for formal hearing did affirmatively plead and prove want of jurisdiction by the I.R.S. over his person, and demanded of them a formal hearing, which obligation of Agency was denied as it has ever since continued to unlawfully assert their pretended jurisdiction over

his person.

Hughes Brailey knew that as the Internal Revenue Service in its quasi judicial capacity/authority was ignoring its obligations under the law, and ignoring all of his pleading for redress, that he would be able to have said Agency's wrongs redressed only through the reviewing/appellate process, so when Agency entered their final, appealable adverse order for levy on his wages, he knew that it was the proper opportunity to petition for review of the issues arising from the contested case on the crucial, paramount issue of jurisdiction. If Brailey had paid the tax alleged to be due, and then petitioned the Tax Court for a refund as the U.S. Attorney General and lower courts have suggested, according to the statute for application of said refund, such proceeding would only be a proceeding statutorily prescribed for the purpose of acquiring a refund, and is not a

review proceeding statutorily prescribed for the sole special purpose of remedying the wrongs of the I.R.S. arising from the precedential contested case on the crucial overriding issue of Agency jurisdiction. The Tax Court, by its name suggests that it is a taxpayer court for lawful objects/subjects of the I.R.S. who merely petition for review of merely errors of the I.R.S. of tax liability. Hughes Brailey is not a "taxpayer" for the purposes of Title 26 taxation, regulation and associated lawful power of destruction, and a refund is not the primary relief he seeks as a matter of Constitutional right. Only does a Title 5 U.S.C., Chapter 7 Judicial Review statutorily prescribe a Constitutionally proper and adequate remedy for the wrongs committed by the Secretary of Treasury, Commissioner of Internal Revenue, U.S.A. in Brailey's individual case as the I.R.S. has defaulted on the issue of jurisdiction

yet has denied him essential due process by denying summary judgement in his favor on the issue of jurisdiction, or in the alternative, default judgement, as is proper under administrative law and procedure. Absent Title 5, Chapter 7 Judicial Review, Brailey is left without remedy and relief necessary to secure all of his other Constitutional rights, and presently being in such position illuminates the paramount importance to him of the 1st Amendment right of petition - appeal, and likewise exemplifies why the right of petition for redress was made the <u>first</u> among all the other rights enumerated in the Bill of Rights, for without availability of this sacred right, all the other sacred rights promised protection under the Constitution cannot be secured - retrieved. Title 5, Chapter 7, section 706, Scope of Review, states: "To the extent necessary to decision and when presented, the reviewing

court shall decide all relevant qestions of law, interpret constitutional and statutory provisions, and determine the meaning of applicability of the terms of an agency action. The reviewing court shall--

(1) compel agency action unlawfully withheld or unreasonably delayed; and

(2) hold unlawful and set aside agency action, findings, and conclusions found to be--

(A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;

(B) contrary to constitutional right, power, privilege, or immunity;

(C) in excess of statutory jurisdiction, authority, or limitations, or short of statutory rights;

(D) without observance of procedure required by law;

(E) unsupported by substantial evidence in a case subject to sections 556 and 557 of this title or otherwise reviewed on the record of an agency hearing provided by statute; or

(F) unwarranted by the facts to the extent that the facts are subject to trial de novo by the reviewing court.

In making the foregoing determinations, the

court shall review the whole record or those parts of it cited by a party, and due account shall be taken of the rule of prejudicial error."

Constitutional rights,-questions are not statutorily designated to be addressed in proceedings for refunds as they are expressly designated in Title 5, Chapter 7. to be addressed - redressed.

26 U.S.C., sect. 7421, while stating that: ".....no suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court by any person, whether or not such person is the person against whom such tax was assessed.", its opening statement states: Except as provided in sections 6212(a) and (c), 6213(a), 7426(a) and (b)(1), and 7429-(b),....". 26 U.S.C., sect. 6213(a), final statement, states:

> "Notwithstanding the provisions of section 7421(a), the making of such assessment or the beginning of such proceeding or levy during the time such prohibition is in force may be enjoined by a proceeding in the

proper court."

The "proper court" could not be the Tax Court because once proceedings in the Tax Court are commenced, 26 U.S.C., sect. 6213(a) precludes the issue of an order for levy: ".....no levy or proceeding in court for its collection shall be made, begun, or prosecuted until such notice has been mailed to the taxpayer, nor until the expiration of such 90-day or 150-day period, as the case may be, nor, if a petition has been filed with the Tax Court, until the decision of the Tax Court has become final. ....."

The "proper court" likewise could not be the U.S. Court of Appeals, and certainly not this Court in an original action. 28 U.S.C., sect. 1331, Federal question, delegates the district courts with original jurisdiction in civil actions involving a "Federal question", which precisely is what Title 5, Chapter 7 Judicial Review addresses. 28 U.S.C., sect. 1346(a)(2) also delegates the district courts with original jurisdiction in any civil action founded

upon the Constitution, or regulation of an executive department, against the United States. 28 U.S.C., sect. 1361, Action to compel an officer of the United States to perform his duty, also delegates the district courts with original jurisdiction in "....any action in the nature of mandamus to compel an officer or employee of the United States or any agency thereof to perform a duty owed to the plaintiff."

Plaintiff-Appellant Brailey also pointed out to the District Court that the contention that the district courts lack subject matter (I.R.S./taxes) jurisdiction on a petition for review, is ludicrous in light of the fact that the district courts are regularly and properly the forums for enforcement of Agency criminal and civil sanctions. Further light is also shed on this matter when observing Title 5, sect. 703, Form and Venue of Proceeding, which states: ".....Except to the extent

that prior, adequate, and exclusive opportunity for judicial review is provided by law, agency action is subject to judicial review in civil or criminal proceedings for judicial enforcement." Hughes Brailey has not filed an income tax return for more than 10 years as he is not enfranchised and has not dealt with corporate stocks and bonds. Though the Internal Revenue Service has never seen fit to charge him guilty of the quasi criminal charge of failure to file, had such charge been made as the first adverse final order entered in the contested case on the issue of jurisdiction, said administratively decided criminal sanction would have necessarily been taken to a district court for enforcement, and as said final adverse order would have been the first order entered in the contested case from which Brailey could petition for review, the district court would certainly have subject matter juris-

diction.

2. Applicable Federal Rules of Appellate Procedure govern lawful procedure in the District Court for a Title 5, Chapter 7 Judicial Review

Petitioner Hughes Brailey fashioned his Petition for Judicial Review in accordance with the only form prescribed for a petition for review of an agency order to be found in any appendix of forms, and that is namely the Appendix of Forms for the Federal Rules of Appellate Procedure, form 3. Nowhere in the Appendix of Forms for the Federal Rules of Civil Procedure is there to be found a prescribed recommended form for a petition for review of an agency order, though the fact that the district courts have jurisdiction to review or enforce orders of Federal agencies is without question as evidenced by various

statutes such as 28 U.S.C., sect. 2112(d). Title 28, sect. 2072 is of relevant interest to petitioner-appellant Brailey, for it is entitled "Rules of Civil Procedure", and therein reference is made to both rules, forms of process, etc. of both the United States District Courts and the United States Courts of Appeals as all being cosidered "rules of civil procedure". As all actions in the United States courts of appeals are reviews - appeals, the Federal Rules of Appellate Procedure unquestionably apply to govern review proceedings therein. Nonetheless, where the U.S. district courts have original jurisdiction to review agency orders, said district courts of the course of reason/-reality become courts of appeals themselves. In conjunction with this fact is the fact that an action for review in the district court is just what it is named, a review, or appeal, and therefore,

in Brailey's humble opinion and best judgement, the Federal Rules of Appellate Procedure must govern lawful procedure in the district courts for Title 5, Chapter 7 judicial reviews, just as said Rules govern procedure in the U.S. Court of Appeals for said judicial reviews. If lawful procedure in the U.S. Courts of Appeals to review orders of agencies are governed by applicable Federal Rules of Appellate Procedure, then likewise, lawful procedure for review of agency orders in the U.S. District Courts must be governed by the same rules where applicable but where they are not displaced/preceded by the Federal Rules of Civil Procedure, such as where agencies are specified with having a 60 day period to answer any civil action. Furthermore, the Federal Rules of Civil Procedure are substantially deficient with regard to necessary procedure on a review - appeal proceeding, such as where there is

no specification/specific provision for the filing of briefs after the administrative record has been filed, so to allow parties to make references to facts on the record on review - appeal. F.R.A.P. Rule 1 states: "These rules govern procedure.....; in proceedings in the courts of appeals for review or enforcement of orders of administrative agencies, boards, commissions and officers of the United States;..."

F.R.A.P. Rule 20 states:

> "All provisions of these rules are applicable to review or enforcement of orders of agencies, except ....."

3. The final adverse order of the Internal Revenue Service, U.S.A. for levy upon Petitioner's wages is VOID and unenforceable under law if provisions of the Federal Administrative Procedure Act for procedure in a contested case on the issue of Agency jurisdiction have been violated by Agency.

Once a review of the administrative record is commenced, the fact that Petitioner Brailey has affirmatively pleaded and proved want of jurisdiction by the Internal Revenue Service, U.S.A. over his person via his Administrative Law Brief/-Pleadings/case law/Affidavits, a certified copy of which was filed with the District Court attached to his Petitioner's Response to Respondent's Answer to the Petition, shall be revealed. Also to be revealed is the fact that the Internal Revenue Service violated provisions of Title 5, U.S.C., the Administrative Procedure Act, for agency procedure in a contested case, whereby Agency failed to hold a hearing on the issue of jurisdiction, and to overcome the weight of evidence against its pretended jurisdiction, and to render judgement on said issue of jurisdiction in Brailey's favor. The agency "sanction" for levy on wages is <u>prohibited</u> if not "within the

jurisdiction granted to the" IRS or agents thereof [5 USC 558 (b), 5 USC 701(b)(2), 5 USC 555 (c), [2] and are additionally prohibited if the whole record does not have upon it all the supporting intelligence and facts (rational basis and JURISDICTIONAL facts, supra) to support the sanctions--not excluding FULL PROOF of jurisdiction (5 USC 556 (d), s. 3). Title 5 recognizes that among the first principles of the law of agency is that he who asserts agency, must prove agency, by stating: "A sanction may not be imposed... except within jurisdiction delegated to the agency..."

5 USC 558 (b)

and: "The reviewing court shall..... hold unlawful and set aside agency action, findings and conclusions found to be...in excess of statutory jurisdiction, authority, limitations, or short of statutory right;"

5 USC 706 (2)(C)

4. The unenfranchised natural individual and his God-given natural rights for survival as guaranteed and protected under the Constitution-common law are not the lawful object of Title 26 U.S.C. taxation, regulation, and associated power of destruction.

Though Petitioner-Appellant Hughes Brailey acknowledges that full consideration of this issue is properly addressed on judicial review, through the proceedings in the courts below which have denied him judicial review, said issue has been raised by him in response to contentions made by the United States suggesting to the contrary, and with especially the U.S. Court of Appeals for the Seventh Circuit reiterating the position of the United States on this paramount - crucial issue. Therefore, though Brailey's Administrative

Pleadings are abundant with statutory and case law on the subject - issue which support his position - argument, for the purposes of this Petition for Writ of Certiorari, for whatever possible aid it may help to bring him in his cause, he summarizes some of the legal points he has made and verified in courts below.

Illinois Revised Statutes Chapter 120, the Illinois Income Tax Act, section 3-303(e)(1), in harmony with Brailey's administrative pleadings bears express statutory affirmation that "income" tax is nothing more than "franchise" tax, or in other words, said tax's application by the states is **limited** to enfranchised or franchised individuals-entities.

> 120 §3-303(e)(1), Taxability in other state: "In that state he is subject to a net income tax, a **franchise** tax measured by net income, a franchise tax for the privilege of doing business, or a corporate stock tax: or"

As all Federal power is a mere grant of

power to the Federal government delegated to it by the states, and as said states cannot delegate power to the Federal government that they themselves do not lawfully possess over the unenfranchised natural individual (e.g.: direct taxation, regulation and associated destruction) so also is the Federal government limited from taxation, regulation, and or destruction of the unenfranchised natural individual.

A "person" (juristic, quasi corporate, corporate) who is enfranchised, or a person who may be lawfully assumed to be enfranchised by the administrative and reviewing-enforcing courts (for their failure to administratively object and plead and prove otherwise), is not under the full protection of the Bill of Rights which only fully applies to the natural individual and his God given **natur**al rights for survival, and thereby commands where government power is limited over said natural individual, and

therefore as said extra common law "persons" (taxpayers) who enjoy state created occupational privilege are under the law not naturally created entities, but artificially governmentally created entities, they cannot claim all of the protective rights under the Bill of Rights limiting government power over the natural individual such as the 4th Amendment right and limitation against government power to intrude into the realm of what is only rightfully private affairs; the 5th Amendment right and limitation against government power to compel self incrimination. According to case law contained in Brailey's Administrative Pleadings, this Honorable Court has confirmed that where one is enfranchised, rights under the 4th and 5th Amendment which can be claimed by the natural person, cannot be claimed by corporations, franchisees, quasi corporate entities, as bar to lawfully tax its crea-

tures. Said lawful power of government to tax its creatures, also of course extends to the lawful power to destroy said creatures.

If enfranchisement necessarily entails the **waiver** of Constitutional rights-guarantees in favor of the natural person against government excesses of power, then it is legally impossible to contend that a natural person **guaranteed** such limitation of governmental power, especially with regard to taxation, **regulation** and **destruction**, can forcibly against his or her will, intent and knowledge be enfranchised, where government necessarily forces deprivation, usurpation of said rights-limitations as guaranteed by the Bill of Rights, etc.. Ludicrous and hypocritical would be any contention that one is being "helped" by government being able to force enfranchisement when one is robbed of their Constitutional guarantees in favor of said enfran-

chisement, being reduced to the status of a ward of the state, and where one is forced to relinquish his sacred common law immunity from government taxation of God given, naturally created rights for survival which this Honorable Court has acknowleged to exist long before the very creation/conception of the state, and where one thus would be held to be not only taxable/liable by government upon the exercise of the basic right for survival of work, as if his person and labor is **owned** by the government, but **destroyable** by government as if he and his natural rights had been created not by God/Nature, but by government. Brailey firmly believes that in a free country the sole essential proper role of government is the protection of **private** rights and the protection of National borders from foreign invasion and harmful influences in its various forms such as unlawful immigration of cheap labor and untaxed-untariffed foreign

goods made with foreign labor paid at wages far substandard to American standards, which tend to reduce American laborers' wages if not eliminate their jobs altcgether, inducing business to hire cheap foreign labor at home or abroad, and compel many Americans to ignorantly seek greater power of government to provide for their subsistence through redistribution of wealth programs offered by ignorant and unprincipled polititions as a substitute for National wealth and prosperity of the common man lost as a result of "free" trade policy, and accompanied by the ever growing trend in this country of ours for ever more of the National wealth to be concentrated into the hands of fewer and fewer individuals, which Brailey deems as being very dangerous to liberty, happiness and stability.

The law merchant which is the supreme rule of court, state and federal, governs

in tax litigation, as affirmed by case law contained within Brailey's Administrative Pleadings, and holds that a person cannot be lawfully held liable for a contract to which he is not a willing, knowing, and intentional party to, such as social "security", and legislatively, state created rights cannot precede - supersede/preclude Constitutionally guaranteed inalienable natural rights.

"Income" tax is **no new power of taxation** - the 16th Amendment did not usher in any previously unknown new power of taxation, but was only held to be intended to serve as clarification/affirmation of the power under the Constitution to apply "income" tax as just another form of "excise" tax on state created privilege.

The United States cannot abrogate a common law right or immunity by way of the 14th Amendment extra-common law grant of U.S. "citizenship" franchise as NO mere sta-

tute nor likewise evidence of law can abrogate a common law right or immunity without clearly on the face establishing that the evidence of that law in NO uncertain, and otherwise in very clear terms is intended to modify or do away with ("displace") such common law immunities and rights, for there is NO repeal by implication.

WHEREFORE, Petitioner Hughes Brailey prays that this Honorable Supreme Reviewing Court of the United States will grant his Petition for Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit in Appeal No. 90-3613.

With prayerful respect,

Hughes Brailey

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APPENDIX

UNITED STATES COURT OF APPEALS

For The Seventh Circuit

Chicago, Illinois 60604

JUDGEMENT - WITHOUT ORAL ARGUMENT

Date: December 26, 1991

BEFORE: Honorable Harlington Wood. Jr.,
Circuit Judge

Honorable Joel M. Flaum,
Circuit Judge

Honorable Thomas E. Fairchild,
Senior Circuit Judge

No. 90-3613

HUGHES BRAILEY,
Plaintiff - Appellant

v.

SECRETARY OF TREASURY, U.S.A., and
COMMISSIONER OF INTERNAL REVENUE, U.S.A.,
Defendants - Appellees

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division
No. 90 C 1901, Judge James B. Parsons

This cause came before the Court for decision on the record from the above mentioned district court.

On consideration whereof, IT IS ORDERED AND ADJUDGED by this Court that the judgement of the District Court in this cause appealed from be, and the same is hereby, AFFIRMED, with costs, with $1500 in sanctions imposed against the plaintiff-appellant, in accordance with the order of this Court entered this date.

UNITED STATES COURT OF APPEALS

For The Seventh Circuit

Chicago, Illinois 60604

Submitted December 3, 1991*

December 26, 1991.

Before

HON. HARLINGTON WOOD, JR., Circuit Judge

HON. JOEL M. FLAUM, Circuit Judge

HON. THOMAS E. FAIRCHILD, Senior Circuit Judge

HUGHES BRAILEY, Plaintiff/Appellant, No. 90-3613 SECRETARY OF TREASURY, U.S.A., and COMMISSIONER OF INTERNAL REVENUE, U.S.A., Defendants/Appellees.	Appeal from the United States District Court for the Northern District of Illinois, Eastern Division. No. 90 C 1901 James B. Parsons, Judge.

ORDER

Taxpayer Hughes Brailey appeals pro se the district court's dismissal of his "Request for Judicial Review." We affirm.

I.

On February 9, 1990, the Internal Revenue Service ("IRS") issued a "Notice of Levy" on Brailey's wages because Brailey owed $2,141.96 in civil penalties for the 1983, 1985, and 1987 tax years. Brailey believes that "he is not the lawful object of Title 26 regulation and taxation." So, on April 2, 1990, Brailey petitioned the district court for review of the IRS's action and requested that the district court order the IRS "to stay its proceedings for levy and seizure."

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* After preliminary examination of the briefs, the court notified the parties that it had tentatively concluded that oral argument would not be helpful to the court in this case. The notice provided that any party might file a "Statement as to Need of Oral Argument." See Fed.R.App.P.34(a); Circuit Rule 34(f). No such statement having been filed, the appeal has been submitted on the briefs.

The district court dismissed Brailey's petition for lack of jurisdiction. We agree with the district court that Brailey's petition, seeking to prevent the collection of the taxes assessed against him, is proscribed by the Anti-Injunction Act. 26 U.S.C. § 7421. The Anti-Injunction Act, with limited exceptions, applies to any aggrieved party for whom Congress has provided an alternative remedy, South Carolina v. Regan, 465 U.S. 367, 378 (1983), and proscribes any "suit for the purpose of restraining the assessment or collection of tax." Bob Jones University v. Simon, 416 U.S. 725, 736 (1974) (citing 26 U.S.C. § 7421(a)). Brailey has an alternative remedy, namely paying the tax and bringing suit for a refund, South Carolina, 465 U.S. at 374-376, and none of the statutory exceptions is appliable to this case.1/

To meet the judicial exception to the

Anti-Injunction Act, Brailey must demonstrate irreparable harm, certainty of success on the merits, or, in other words, that the government cannot ultimately prevail on the merits. Id. at 374; (citing Enochs v. Williams Packing & Navigation Co., 370 U.S. 1, 6-7 (1962)). We agree with the district court that Brailey's suit is not within the judicial exception. In challenging his tax liability, Brailey asserts "tax protester type arguments": 1) as a "natural person under the common law" he is not subject to tax because "income tax is an excise tax on the privilege of conducting business in an extra-common law capacity;" and 2) that federal income tax liability is contractual and he did not knowingly or willingly contract with the federal govern-

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1/ Although Brailey alleges that these exceptions are applicable to his case, he provides this court with no facts or argument in support of that allegation.

ment. These arguments have been consistantly rejected by the courts.2/ See McLaughlin v. Commissioner of I.R.S., 832 F.2d 986, 987 (7th Cir. 1987) ("[t]he notion that federal income tax is contractual or otherwise consensual in nature is not only utterly without foundation but, ... has been repeatedly rejected by the courts"); Coleman v. Commissioner, 791 F.2d 68, 70 (7th Cir. 1986), and cases cited there, (rejecting "tired" argument that a "common law" or "natural" individual who receives no special government privileges may not be taxed). Thus, Brailey cannot demonstrate certainty of success on

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2/ It appears that Brailey also argues that the government will not prevail on the merits because the IRS allegedly failed to provide him with a formal hearing "on the issue of jurisdiction" in violation of the Administrative Procedure Act. However, Brailey does not offer any citation to legal authority in support of this argument. United States v. Cherif, 943 F.2d 692, 700 (7th Cir. 1991).

the merits. Nor can he establish that he will be irreparably harmed if the IRS is not enjoined from collection because of the availability of a refund suit. South Carolina, 465 U.S. at 374-78; Bob Jones University, 416 U.S. at 746-47; Enoch, 370 U.S. at 6-7.

Brailey's case does not fall within the statutory or judicially created exceptions to the Anti-Injunction Act. A suit which does not fall within one of these exceptions is dismissed for lack of subject matter jurisdiction. Elias v. Connett, 908 F.2d 521, 523 (9th Cir. 1990). Accordingly, the district court correctly dismissed Brailey's petition.3/

Lastly, the IRS has asked this court, pursuant to 28 U.S.C. § 1912 and Fed. R. App. P. 38, to impose sanctions against Brailey for filing this appeal. This court has imposed sanctions on appellants, even those proceeding pro se, who insist on

pressing superficial and stale arguments on appeal. Miller v. United States, 868 F.2d 236, 242 (7th Cir. 1989). In Miller, this court warned appellants that "we will deal harshly with frivolous tax appeals and will not hesitate to impose sanctions ...." Id. On appeal, Brailey seeks to prevent collection of the taxes assessed against him through frivolous and repeatedly rejected "tax protester" arguments. Under these circumstances, sanctions are appropriate. See Coleman, 792 F.2d at 72 (citing Connor v. Commissioner, 770 F.2d 17, 20 (2d Cir. 1985) (argument that wages

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3/ Because we affirm for lack of subject matter jurisdiction, we need not discuss the district court's alternative grounds for dismissal of Brailey's suit. We note, however, that Brailey's argument that the Federal Rules of Appellate Procedure governed his action in the district court is meritless. Thus, Brailey's contention that the district court improperly refused to order the IRS to file his administrative record under Fed. R. App. P. 17 necessarily lacks merit.

are not income has been rejected so frequently that the very raising of it justifies the imposition of sanctions); see also McLaughlin, 832 F.2d at 988 (this court imposed sanctions where appellant persisted in raising patently frivolous tax protester claims on appeal); Granado v. Commissioner, 792 F.2d 91, 94 (7th Cir. 1986) ("litigants who pursue frivolous arguments before this court can expect sanctions"). In accordance with this circuit's practice, Brailey is sanctioned $1,500 damages in lieu of attorneys fees under Fed. R. App. P. 38. See Miller, 868 F.2d at 242 ("[i]n conformity with our policy for such tax protester cases, Coleman, 791 F.2d at 73, we sanction Miller $1500 in lieu of attorneys' fees under Rule 38 of the Fed. Rule of App. Procedure"); Mclaughlin, 832 F.2d at 988; Granado, 792 F.2d at 94.

For the reasons stated herein, the dis-

trict court's order is AFFIRMED with $1500 in SANCTIONS imposed against the plaintiff-appellant. Brailey is ordered to make payment to the clerk of this court within (30) days by a check made payable to the U.S. Treasury.

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

BRAILEY, Plaintiff,	)	
vs.	)	No. 90-C-1901
SECRETARY OF TREASURY, U.S.A., Commissioner of IRS, U.S.A., Defendants.	)	

MEMORANDUM OPINION AND ORDER

This is the United States' Motion to Dismiss the Petitioner's Request for Judicial Review. On April 2, 1990, the petitioner, Brailey, brought this action requesting a review by this court "of the Order of the IRS, U.S.A. for levy on his common law wages, which Order entered on February 9, 1990." Petitioner's jurisdictional statement alleges that jurisdiction is invoked under 26 U.S.C. sections 6213(a) and 6331(a), 28 U.S.C. sections 1346(a)(2) and 1361, and 5 U.S.C. section 702.

At a June 29, 1990 hearing before me,

the petitioner indicated that he was seeking a review by this court in order to challenge the levy on his wages. The petitioner apparently tracks this petition back to certain occurances as far back as 1981 and possibly even earlier.

On May 31, 1990, the United States answered the petition and noted that the court lacked subject matter jurisdiction, the action is barred by the Anti-Injunction Act, 26 U.S.C. section 7421, the United States has not waived its sovereign immunity to be sued, and that the named respondents are improper parties to this action. At that time and again at the June 29, 1990 hearing, the United States requested that the action be dismissed for the above stated reasons. After a review of the motion and the petitioner's response, the court is in agreement with the United States' position that this action should be dismissed.

This action is barred by the Anti-In-

junction Act. 26 U.S.C. section 7421(a) states:

> Except as provided in sections 6212(a) and (c), 6213(a), 6672(b), 6694(c), 6426(a) and (b)(1), and 7429(b), no suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court by any person, whether or not such person is the person against whom such tax was assessed.

None of the above exceptions apply to the petition. In addition, the petitioner has an adequate remedy at law, namely paying the tax and filing a claim for refund. Moreover, the petitioner cannot show that under no circumstances could the government ultimately prevail. Accordingly, under Enochs v. Williams Packing & Navigation Co., 370 U.S. 1 (1962), the petitioner's request for judicial review must be denied and this case dismissed for want of subject matter jurisdiction.

Finally, the court notes that the United States has not waived its sovereign immunity to be sued in this action, and the

named respondents are improper parties to this action. Pugh v. IRS, 472 F.Supp. 350 and n.1 (E.D. Pa. 1979). But even when the United States is substituted for the named respondents, the action is barred by the Anti-Injunction Act. This case is dismissed. It is so ordered.

ENTER:

James B. Parsons
United States
District Court Judge

Dated: October 5, 1990

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

Hughes Brailey, pro se, Petitioner,	)	
vs.	)	CIVIL ACTION NO. 90-C-1901
Secretary of Treasury, U.S.A., Commissioner of Internal Revenue, U.S.A. Respondent.	)	Petition For Judicial Review Judge Parsons Magistrate Weisberg

Petition For Judicial Review

Hughes Brailey, pro se, hereby petitions the Court for review of the Order of the Internal Revenue Service U.S.A. for levy on his common law wages, which Order entered on February 9, 1990.

In filing of the whole administrative record, the Internal Revenue Service must include Petitioner Brailey's Administrative Law Brief-pleadings-affidavits on the issue of I.R.S. jurisdiction over his person, which Administrative Law Brief was filed-served on Agency via certified return

receipt mail on December 14, 1981.

Hughes Brailey, pro se
532 W. Roscoe St.
Apt. 367
Chicago, IL 60657-3531

Form 668-W(c) (Rev. Jan.1990) Department of the Treasury-Internal Revenue Service

Notice of Levy on Wages, Salary, and Other Income

Date: 02/09/90 District: Los Angeles

Telephone Number of IRS Office
SF AREA 268-0561
IN CALIF 1-800-421-4999
OUT OF CALIF 1-800-421-4999

FRESNO INTERNAL REVENUE SERVICE-ACS
P.O. BOX 24017
FRESNO, CA 93779-4017

TO: P 36-3063794

NAME AND ADDRESS OF TAXPAYER

NWC BODY WORKS INC
2401 E HIGGINS RD
ELK GROVE VILLAGE IL 60007-2605

HUGHES N BRAILEY
1330 S OLIVE
LOS ANGELES CA 90015-3019
IDENTIFYING NUMBER(S)
349-44-5420

BRAI H 01

Kind of Tax	Tax Per. Ended	Unpaid Bal. of Assess.	Stat. Add.s	Total
CIVPEN	12-31-83	$510.00	$299.31	$809.31
CIVPEN	12-31-85	$500.00	$230.45	$730.45
CIVPEN	12-31-87	$500.00	$102.20	$602.20

Total amount due: $2,141.96

Interest and late payment penalty have been figured to 03-05-90

This is not a bill for taxes you owe. It is a notice of levy used to collect money owed by the person named in the upper right of this form.

As required by the Internal Revenue Code, notice and demand for the above amount were made on the taxpayer, who neglected or refused to pay. The amount is unpaid and still due. Chapter 64 of the Internal Revenue Code provides a lien for the tax and statutory additions. Items levied on to pay this are: (1) all wages and salary for personal services of this taxpayer that you now possess or for which you become obligated, from the date you receive this notice of levy until a release of levy is issued, and (2) other income belonging to this taxpayer that you now possess or for which you are obligated. These wages, salary, and other income are levied on only to the extent that they are not exempt from levy under Code section 6334 as shown in the instructions. Demand is made on you to pay the total amount due.

DO NOT OFFSET FUNDS THE TAXPAYER OWES YOU WITHOUT CONTACTING THE IRS OFFICE SHOWN ABOVE BY PHONE FOR INSTRUCTIONS.

If no funds are due this taxpayer, please complete the back of part 3. Attach it as a cover to the rest of this form and return all parts in the enclosed envelope.

If funds are due this taxpayer, please see the back of this page for instructions.

Signature of Service Representative

Title

(a- 2) CHIEF, COLLECTION BRANCH

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

Hughes Brailey, pro se, Petitioner,	)	
vs.	)	CIVIL ACTION NO.- 90-C-1901
Secretary of Treasury, U.S.A., Commissioner of Internal Revenue, U.S.A. Respondent.	)	Petition For Judicial Review Judge Parsons Magistrate Weisberg

Jurisdictional Statement

Jurisdiction of this Honorable Reviewing Court for Judicial Review is based on the 1st Amendment right of the Constitution of Petitioner to petition government for redress of grievance, the Constitutional rights guaranteeing due process of law, equal protection, and other rights and immunities under the Constitution.

Jurisdiction is invoked under the United States Code as follows:

A. 26 U.S.C., sect. 6213(a), final statement, in that Petitioner's cause of action arises as a result of action by an Agency of the Uni-

ted States per 26 U.S.C., sect. 6331(a).

B. 5 U.S.C., sect. 702 (Chapter 7)

C. 28 U.S.C., sect. 1346(a)(2)

D. 28 U.S.C., sect. 1361

Petitioner also maintains that jurisdiction of this Court for review or enforcement of Agency orders is governed by applicable provisions of the Federal Rules of Appellate Procedure applying to said review or enforcement of Agency orders.

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